REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ROHM APOLLO SEMICONDUCTOR PHILIPPINES, *Petitioner,*	**C.T.A. EB No. 59 (C.T.A. Case No. 6534)**
	Present:
-versus-	**Acosta, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, and Palanca-Enriquez, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 2 2 2005 EPApolinario

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DECISION

ACOSTA, PJ.:

This is a Petition for Review filed on January 18, 2005, seeking the reversal and setting aside of the Decision of the First Division dated May 27, 2004 denying petitioner's claim for refund in the amount of P30,359,615.40 representing unutilized input VAT paid on capital goods purchased for the months of July and August 2000, and the Resolution dated December 13, 2004, denying petitioner's Motion for Reconsideration.

The antecedent facts as culled from the records are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC). On May 10, 2000, it was registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer *(Exhibit "C")*. On

September 18, 2000, petitioner was likewise registered with the Philippine Economic Zone Authority (PEZA) as an "Ecozone Export Enterprise" pursuant to the provisions of Republic Act No. 7196, to engage in the manufacture of semiconductors products, particularly microchip transistors and tatalium capacitors at the People's Technology Complex –Special Economic Zone, Bo. Maduya, Carmona, Cavite *(Exhibits "D" and "E")*.

Petitioner started its commercial operations on September 1, 2001, as shown in the "Notice of Approval of SCO No. 2002-014" issued by PEZA on June 20, 2002 (Exhibit "F"). However, prior to said date, or on about June 2000, petitioner contracted the services of Shimizu, petitioner made initial payments on July 7, 2000 and August 3, 2000 in the respective amounts of P198,551,884.28 and P132,367,923.58 [both inclusive of 10% VAT and net of 1% withholding tax] *(Exhibit "I" to "L")*.

Believing that the aforesaid payments qualify as capital goods purchases, petitioner filed an application for tax credit/refund of the input VAT payments corresponding thereto in the sum of P30,359,615.40 *(Exhibit "Y")*.

Again, on August 29, 2001, petitioner sent another letter to the BIR informing the latter that it was submitting the necessary documents relative to its refund claim *(Exhibit "Z")*.

Since respondent had not acted on its claim and the two-year prescriptive period for filing a judicial claim was about to lapse, petitioner instituted the present appeal on September 11, 2002.

In its Decision dated May 27, 2004, this Court denied the claim for refund.

Petitioner then filed a Motion for Reconsideration and Motion to Admit Supplemental Exhibits (to Support Motion for Reconsideration) on July 14, 2004 and October 11, 2004, respectively, which were subsequently denied in a resolution dated December 13, 2004.

Hence, petitioner filed this Petition for Review raising the following grounds:

1. The First Division of the Honorable Court erred in concluding that the claimed input VAT payments were applied against/carried over to the succeeding taxable quarters;

2. The First Division of the Honorable Court erred in disregarding the testimony of the petitioner's accounting supervisor;

3. The First Division of the Honorable Court erred in not giving credence to the documentary evidence tendered by the petitioner; and

4. In sum, the First Division of the Honorable Court erred in denying the petitioner's claim for refund.

The First Division of the Court of Tax Appeals did not err in denying petitioner's claim for refund. Petitioner's failure to present its VAT returns for the subsequent year proved fatal to its claim. There was no way the First Division could verify and determine whether or not the alleged refundable amount remained unutilized given the pieces of evidence duly offered and admitted.

The Monthly and Quarterly returns for the year 2001 attached by petitioner to its Motion for Reconsideration instead of helping prove petitioner's allegation did the opposite. In fact, a perusal of the returns revealed that the amount being claimed was actually carried-over to the succeeding quarters. The First Division stated it in this manner:

> "Even for the sake of argument that We allow the admission of petitioner's VAT returns, the same would not make Us change Our original decision. The returns for taxable years 2001, 2002 and 2003 show that the claimed input VAT of P30,359,615.40 formed part of the accumulated input VAT which was continuously carried-over to the succeeding quarters. Contrary to petitioner's assertion, the claimed input VAT of P30,359,615.40 was partially applied against petitioner's reported output VAT liability in the year 2003 in the total amount of P35,258.33. The remaining claim of P30,394,873.73 (P P30,359,615.40 less P30,394,873.73) was included in the total amount of accumulated excess input VAT of P30,456,239.64 as of the fourth quarter of 2003 which was to be carried-over to the succeeding quarters of 2004. In other words, petitioner still intended to apply the claimed excess input VAT against its succeeding quarter's output VAT liabilities. Otherwise, the input VAT of P30,456,239.64 should have been deducted under the category "Less any VAT Refund/TCC claimed" provided in its VAT return for the fourth quarter of 2003. Regardless of what petitioner asserted, these documents speak for themselves."

Anent the second ground that the testimony of petitioner's accounting supervisor was not given credence, this Court's First Division, contrary to the contention of petitioner, has assessed and properly weighed the said testimony. Just like any other piece of evidence submitted and/or formally offered in support of one's claim, the testimony of petitioner's accounting supervisor was fully evaluated and put under close scrutiny both as to its validity and in granting due weight to the said piece of evidence.

The Motion to Admit Supplemental Exhibits (To Support Motion for Reconsideration) that the petitioner subsequently submitted and the Monthly and Quarterly VAT Returns for taxable year 2003 and Amended Monthly and Quarterly VAT Returns for the period January to August 2004, which petitioner attached, to support its claim that its alleged excess input VAT were not carried-over to the succeeding quarters are indeed inadmissible in evidence. The said returns and supplemental exhibits, aside from the fact that they were not original documents and although the words "certified true copies" appeared on the face of the documents, the person who certified the same was not presented in court, those returns were not presented during the trial and were not formally offered in evidence, hence, are mere scraps of paper.

The First Division has correctly ruled on this issue in this wise:

> "Petitioner may have submitted its amended VAT returns for the period January to August 2004 to disclose that no part of the claimed excess input VAT of P30,456,239.64 was carried-over, still, said documents cannot be given any credence.
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> "First, petitioner did not submit the original VAT returns thereof to prove that indeed it did not carry over the subject amount as it insisted. Second, if the amount was carried over, the original documents would show how much was actually utilized and applied against petitioner's output VAT liability for the period. Third, the amendment of said returns was only made long after this case has been decided. Therefore, the very purpose of the amendment was to support petitioner's allegation in its Motion for Reconsideration that the subject claim was not carried over to the succeeding taxable quarter. We cannot countenance this act of petitioner. Although petitioner is allowed by law to amend its returns, it is Our considered Opinion that the amendment so allowed does not extend as to give support to petitioner's allegations in its pleadings which are clearly contradictory to the existing evidence on record."

Petitioner likewise argues that the VAT Returns, being public documents, are *prima facie* evidence of facts stated therein, and hence, the custodian thereof need not be presented to testify and identify the same in court.

We disagree.

The VAT Returns are not one of those public documents referred to in Section 19, Rule 132 of the Rules of Court. This presumption will not apply when the validity of the said document is put in question, as what happened in this case. Thus, petitioner's reliance on said provision is misplaced.

The petitioner or any party, for that matter, must not expect that every piece of evidence it presents will always create the effect it expects and wishes to cause, *viz.*, to prove its claim. The parties can and must only expect that the Court will evaluate these pieces of evidence and then make its ruling in the light of the facts, the applicable laws and the other evidence presented by the parties.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on May 27, 2004 and Resolution dated December 13, 2004, the instant Petition for Review is hereby **DENIED** due course for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Resolution has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice